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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 678/2015*, **

Communication submitted by:	I.K. (represented by counsel, Knut Rognlien)
Alleged victim:	The complainant
State party:	Norway
Date of complaint:	10 September 2013 (initial submission)
Date of adoption of decision:	16 May 2018
Subject matter:	Ill-treatment by State authorities; failure to investigate
Procedural issues:	Admissibility — other procedure; failure to exhaust domestic remedies; victim status
Substantive issues:	Ill-treatment in detention — prompt and impartial investigation; training of law enforcement officials; solitary confinement
Articles of the Convention:	10, 11, 12 and 16

1. The complainant is I.K., a national of Norway born in the Union of Soviet Socialist Republics in 1961. He claims to be a victim of a violation by Norway of his rights under articles 10, 11, 12 and 16 of the Convention. The State party made the declaration under article 22 of the Convention on 9 July 1986. The complainant is represented by counsel, Knut Rognlien.

The facts as presented by the complainant

2.1 On 8 November 2006, the complainant was arrested and taken to Oslo Central Police Station. He was arrested for disturbing public law and order by smashing a window during a dispute at a friend's house, and later was also charged with biting a police officer's hand while being transported to the police station.[1] He was put in solitary confinement[2] and kept there overnight until being released the following morning. When arrested, and during

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

[1] The police report shows that the complainant was intoxicated and aggressive, and had to be subdued by the arresting officers. During the interview with the police on 9 November 2006, the complainant admitted to having drunk two small glasses of beer the night before.

[2] The complainant uses the term "solitary confinement" to refer to a single holding cell at the police station.

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his detention, he requested medical treatment for his mental illness.[3] He did not receive any such treatment, despite the fact that the police officers perceived him to be mentally ill, which was evidenced by the entries in the police log. At night when he was in his cell, he was beaten by three unknown police officers,[4] causing him physical injuries (swelling and a haematoma near his left eye, a small abrasion on his left cheek, a haematoma on his left shoulder, and a sore scalp due to pulled hair). On 9 November 2006, 15 hours after his arrest, he was released, pending official charges. Upon release, he visited an emergency medical service to receive medical assistance for his injuries.[5] He claims that that experience was particularly traumatizing for him because he had previously been a victim of police violence in Norway, in 2005.[6]

2.2 On 15 November 2006, the complainant's counsel requested information about his detention and the names of the custody officers on duty on the dates in question.[7] On 7 January 2008, during the main hearing, the complainant explained that he had been subjected to violence while in custody.[8]

2.3 On 21 April 2008, the complainant was acquitted by Oslo City Court for the 8 November 2006 incident on the grounds that he lacked sanity.[9]

2.4 On 1 November 2011, the complainant reported the beating to the Norwegian Bureau for the Investigation of Police Affairs. On 17 April 2012 the Bureau decided to not prosecute the police officers, because it found that "it would be unlikely that an investigation based on the available information would produce evidence that he has been a victim of a criminal offence". It also found that it was likely that the injuries sustained by the complainant were connected to the use of force described in the police report of the incident. The Bureau took into consideration the fact that the complaint had been filed five years after the incident, that the complainant's information about the use of force in the holding cell was vague, and that the psychiatric assessment had concluded that there was doubt about whether the complainant was of sound mind at the time of his arrest, which affected the credibility of his statement regarding the use of force against him.

2.5 On 26 April 2012, the complainant submitted a preliminary appeal, and on 30 May 2012 a full appeal, to the Norwegian Bureau for the Investigation of Police Affairs, which forwarded it for a decision to the Director General of Public Prosecutions. On 17 July 2012, the Director General upheld the Bureau's decision, stating that it "agrees with the Bureau on all material points".

2.6 On 17 July 2010, the complainant applied to the European Court of Human Rights. His application was declared inadmissible under articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), by a single-judge decision on 29 November 2012.

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[3] In his interview with the Norwegian Bureau for the Investigation of Police Affairs, on 1 November 2011, the complainant stated that he had asked the police to take him to hospital because he felt stressed, and asked again to be taken to hospital after having been put in his cell.

[4] The complainant had not seen these police officers before, and they were not the ones who initially arrested him.

[5] Copies of medical reports are provided. They contain his allegations of the beatings and a description of his injuries.

[6] The complainant claims that he developed post-traumatic stress disorder after his arrest on 13 May 2005 for having lit a fire in a park. He alleges that during his arrest he was thrown to the ground and hit his head on a rock, after which he was handcuffed and stepped on. He reported that incident on the same day to the Norwegian Bureau for the Investigation of Police Affairs, however the Bureau decided, on 26 May 2006, not to prosecute the officers. He appealed against the Bureau's decision, but that appeal was also denied, by the Director General of Public Prosecutions, on 8 August 2006.

[7] A copy of the counsel's letter is provided. It only requests documents related to the detention, and names of officers. No information regarding possible ill-treatment is included in the letter.

[8] No further details on this were provided in the original complaint.

[9] The psychiatric assessment of the complainant made on 11 February 2008 found him to be "psychotic" and not fit to stand trial. In the assessment, it is stated that the complainant "appears to have paranoid ideas, somatoform delusions and possible hallucinosis of a more sporadic nature".

2.7 On 21 May 2012, the complainant submitted a claim to the Norwegian Civil Affairs Authority for non-pecuniary damages, subsequent to his criminal prosecution. On 15 January 2014 the Authority rejected his claim, concluding that "the prosecution was no more invasive that he had to expect, considering the short period of time for which he was detained and his suspicion-arousing and volatile behaviour".

2.8 The complainant submits that since the decision of the Director General of Public Prosecutions cannot be reviewed by other national authorities,[10] he has exhausted all available and effective domestic remedies.

The complaint

3.1 The complainant claims that his 15-hour stay in solitary confinement in the police station, without any medical care, and the beatings by the police officers, amount to inhuman and degrading treatment in violation of article 16 of the Convention.

3.2 He claims that the failure by the Norwegian Bureau for the Investigation of Police Affairs to investigate his complaint is contrary to article 12 of the Convention. He maintains that the burden of proof is on the State party to show that injuries that occurred during the police custody could have been due to circumstances for which the State party bears no responsibility. He claims that the State party did not provide any plausible explanation with respect to the physical injuries, which were not recorded upon his arrest but were confirmed upon his release from custody in the medical report. He also claims that the fact that the State party did not secure sufficient evidence after the incident, for example by questioning the custody officers, also contributed to a violation of article 12 of the Convention.

3.3 The complainant asserts that there is a violation of articles 10 and 11 of the Convention because the education, information, instructions and arrangements in place are not sufficient to treat persons with mental problems adequately when arrested and held in detention.

State party's observations on admissibility

4.1 In a note verbale dated 6 July 2015, the State party submitted its observations on admissibility of the complaint. The State party claims that the complaint is inadmissible because the complainant is not a victim under article 22 (1) of the Convention with respect to articles 10 and 11. The State party argues that neither article 10 nor article 11 provides the complainant with individual rights. In its opinion, the wording of article 10 shows that the provision is aimed at the relationship between the Government and personnel responsible for persons who have been deprived of their liberty, and not the relationship between the Government and each individual detainee. Similarly, article 11 does not govern the direct relationship between the Government on the one hand, and individual detainees on the other. Instead, the wording of article 11 shows that the provision imposes a general obligation on the State towards society at large. While admitting that the obligations contained in articles 10 and 11 represent important means for preventing cruel, inhuman and degrading treatment in general within a State party, the Government observes that a failure by the State party to comply with the said article will not have a direct effect on individuals who are detained. This potential effect for individual detainees is, in the State party's opinion, too consequential and indirect to constitute a subjective right for the complainant in the present case.

4.2 Moreover, the State party claims that the complaint is also inadmissible because the same matter has been examined by the European Court of Human Rights. In the State party's opinion, the complaint to the European Court of Human Rights concerned the "same matter", and the same matter has been "examined" by the European Court of Human Rights. The State party submits that the European Court of Human Rights could not have declared the complaint inadmissible on any of the following grounds: failure by the complainant to comply with the six-month deadline for filing a complaint; the case being

[10] In the decision of the Director General, it is stated that the decision cannot be appealed, but that the complainant has the right to institute a private prosecution of the case.

duly considered by a domestic tribunal; the complainant being anonymous; or, the complaint being examined by another procedure. This leaves only the following grounds for declaring the case inadmissible: (a) the complainant is not a victim; (b) the complainant has not exhausted domestic remedies; or (c) the complaint is incompatible with the European Convention on Human Rights, manifestly ill-founded, or an abuse of the right of individual application; and the State party argues that all these grounds for inadmissibility under the European Convention on Human Rights correspond to the relevant grounds for inadmissibility that would lead to inadmissibility under the Convention against Torture.

4.3 Finally, the State party contests the complainant's assertion that all available domestic remedies have been exhausted following the appeal to the Director General of Public Prosecutions. Firstly, if the complainant has determined that prosecution is an adequate legal avenue for pursuing relief, he could have initiated a private prosecution against any of the suspected officers. Secondly, he could have filed a complaint directly with the police. Although this possibility is aimed at matters that do not amount to criminal offences by individual police officers, such as failure by the State to provide adequate training to personnel, it would have enabled the police to remedy the alleged violations of articles 10, 11 and 12 of the Convention. Thirdly, there were other more appropriate remedies available to the complainant than prosecution. In particular, he could have sought relief from the Government through an ordinary civil suit, claiming damages and/or a declaratory judgment to establish that his individual rights under the Convention had been violated. The complainant sought compensation for non-pecuniary damages from the Norwegian Civil Affairs Authority, which is a subordinate agency of the Ministry of Justice and Public Security. The Norwegian Civil Affairs Authority's rejection of the claim was subject to a judicial review by ordinary courts. However, the complainant has not brought the claim for compensation before ordinary courts for judicial review, nor provided any reasons for not doing so. The State party argues that the complainant's failure to bring the case before an ordinary court of law rendered the complaint inadmissible as regards an alleged violation of article 16 of the Convention.

4.4 Moreover, the State party claims that the complainant could have also sought to establish through a declaratory action that there had been a violation of the Convention. The Supreme Court of Norway has established that a declaratory action can be taken against the Government to establish that there has been a breach of an individual's human rights pursuant to human rights conventions that have been incorporated into Norwegian law. The European Convention on Human Rights and the International Covenant on Civil and Political Rights have already been given status as Norwegian law, which means that it would have been possible for the complainant to seek a declaratory judgment with respect to the provisions corresponding to article 16 of the Convention against Torture in the European Convention on Human Rights (art. 3) and the International Covenant on Civil and Political Rights (art. 7). In the same way, the complainant could have sought a declaratory action to establish a violation under article 12 of the Convention against Torture through article 3 of the European Convention on Human Rights, and under articles 10 and 11 of the Convention against Torture through article 7 of the International Covenant on Civil and Political Rights, since they correspond to the same obligations.

4.5 The State party observes that there is no information in the complaint to suggest that the application of the above-mentioned remedies would be unreasonably prolonged or unlikely to bring effective relief to the complainant. The State party notes that it would be justifiable to absolve individuals from the requirement to exhaust remedies in time-critical matters due to the individual circumstances of a particular case. However, in the present case, the alleged violations took place in 2006, and the complainant waited for five years before even reporting them to the authorities. The State party also notes that the case documents do not show that ordinary court proceedings were unavailable to the complainant due to financial or other reasons, as the complainant was given legal aid at an earlier stage of the case, and he is also assisted by legal counsel with the present complaint.

Complainant's comments on the State party's observations on admissibility

5.1 In his submission dated 15 September 2015, the complainant submitted his comments on the State party's observations on the admissibility of the case.

5.2 In response to the State party's assertion that the complainant is not a victim under articles 10 and 11 of the Convention, the complainant agrees with the State party that the articles do not give the complainant individual rights in and of themselves, however he argues that since article 16 gives subjective rights to individuals, articles 10 and 11, when combined with article 16, give rise to State party obligations, and can be claimed by the complainant, as a victim.

5.3 The complainant states that although the facts that he submitted to the Committee are the same as those included in his application to the European Court of Human Rights, his complaint before the Committee does not refer to the same substantive rights, given that articles 12 and 16 of the Convention do not have the same content as article 3 of the European Convention on Human Rights. Moreover, the European Court of Human Rights has not "examined" the same matter. Since the European Court of Human Rights considered the application inadmissible without giving any other reasons beyond referring to articles 34 and 35 of the European Convention on Human Rights, one cannot argue that inadmissibility under the European Convention on Human Rights corresponds to the same inadmissibility grounds that would lead to inadmissibility under the Convention against Torture.

5.4 The complainant submits that domestic remedies have been exhausted, because his complaint has been considered by the Norwegian Bureau for the Investigation of Police Affairs, the Director General of Public Prosecutions and the Norwegian Civil Affairs Authority, and no investigation has been opened as a result of these complaints. The State party has therefore had many opportunities to consider and remedy the alleged violations. The complainant also argues that the Norwegian Bureau for the Investigation of Police Affairs is actually better suited to investigating cases such as his than national courts are, in part because the Bureau has powers to obtain, secure and assess relevant evidence. The complainant indicates that launching a private prosecution in this case would be very difficult in practice, because the identities of the police officers responsible for the beatings are not known. It would be impossible to obtain necessary statements about the events connected with the complainant's detention and the result would be a lack of evidence, which is also why the Bureau decided to not prosecute the police. Furthermore, the complainant could not bring a civil claim for damages before the Norwegian courts because he had not suffered a direct monetary loss, which would be necessary under the Norwegian Compensation Act. Thus, any civil lawsuit in this case would be hopeless. Nor could he appeal against the decision of the Norwegian Civil Affairs Authority to courts, because his claim would be found to be too old.

5.5 The complainant claims that when there are alternative remedies available, a State party cannot demand that all possible legal remedies be exhausted, and that it must be sufficient that one claim has been pursued as far as possible.[11] He argues that he has taken his penal case as far as possible, and that it would be unreasonable to ask him for further steps over and above those he has already taken.

5.6 Finally, the complainant questions the State party's claim that he could have sued the Government in a Norwegian court for a declaratory action. The Norwegian Supreme Court has ruled that in order for there to be a finding of a breach of an international convention, the convention itself must stipulate an effective legal remedy at the national level regarding breach of the convention, as is the case in article 13 of the European Convention on Human Rights and article 2 of the International Covenant on Civil and Political Rights. The Supreme Court has ruled that the Convention against Torture does not have the same status as Norwegian law, thus the complainant cannot bring a claim on the basis of the Convention itself.[12] It would be unreasonable to expect the complainant to take his case through the Norwegian judicial system to have the Supreme Court rule on this matter again, especially considering the costs associated with such litigation. The complainant does not have the means to cover the legal costs, and there is no public funding that would allow him to cover them.

[11] The complainant refers to the European Court of Human Rights case of *López Ostra v. Spain* (application No. 16798/90), judgment of 9 December 1994, para. 36.

[12] Norwegian Supreme Court decisions Rt-2012-2034 and Rt-2008-513.

State party's observations on the merits

6.1 In a note verbale dated 6 November 2015, the State party submitted its observations on the merits of the complaint, while maintaining its position about the inadmissibility of the case. It states that there has been no violation of article 16 of the Convention because the injuries sustained by the complainant are compatible with the lawful use of force that was necessary when he resisted arrest and detention and attacked and threatened the police officers. The complainant's account must also be considered in the light of the fact that he suffered from hallucinations and a distorted perception of reality, including paranoid delusions about the police. The State party alleges that the complainant's suffering during the stay in the holding cell did not go beyond the inevitable element of suffering that is connected with detention in a situation such as the matter in hand. There is no evidence that the officers perceived the complainant as being mentally ill. In any case, the complainant was in an intoxicated state which ruled out mental care before the next morning, when he was released. The State party refers to *Keremedchiev v. Bulgaria*, in which the Committee found that "while recognizing that pain and suffering may arise from a lawful arrest of an uncooperative and/or violent individual, the Committee considers that the use of force in such circumstances should be limited to what is necessary and proportionate".[13] Similarly, the European Court of Human Rights has consistently held that the treatment "must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment" in order to constitute inhuman or degrading treatment under article 3 of the European Convention on Human Rights.[14] Thus, lawful detention in a holding cell does not in itself raise an issue under the said provision.

6.2 The State party reiterates that because the alleged violations occurred more than 10 years ago, the situation with evidence in the case is challenging. The State party has been in touch with several of the officers who were present when the complainant arrived at the holding cells, who could neither remember the complainant nor the alleged incident. Apart from this, the available evidence is limited to written reports and other documents from the time.

6.3 The State party rejects the complainant's allegation that his injuries were inflicted by three police officers who came into his cell at night and beat him. It provides its own explanation for the injuries, suggesting that they could have been sustained when the complainant was arrested and brought into the cell. The behaviour of the complainant required the police officers to use proportionate force on three occasions: (a) when the complainant opposed the arrest;[15] (b) when he bit one of the police officers and needed to be held down in the police car;[16] and (c) when the police conducted a body search in the cell after the complainant had threatened to attack the officers.[17] The State party submits that in view of the above, the injuries sustained are compatible with the use of force that was necessary due to the complainant's aggressive and violent behaviour, and that no excessive force was used against the complainant. As regards the credibility of the complainant, the State party reiterates that it has subsequently become clear that the complainant was suffering from mental illness that made him see things on and around the time of the detention on 8 November 2006.[18] The State party also refers to a preliminary judicial declaration from 2008 issued by the senior consultant psychiatrist of Oslo District Court which reveals that the complainant expressed "paranoid delusions about the police".

[13] CAT/C/41/D/257/2004, para. 9.3.

[14] See European Court of Human Rights, *Kudla v. Poland* (application No. 30210/96), judgment of 26 October 2000, paras. 92 and 93.

[15] It is stated in the police report that when being handcuffed, the complainant "resisted and attempted to wriggle free when the police fastened the handcuffs behind his back".

[16] It is stated in the police report that after the complainant bit one of the police officers' finger, the officer "placed him stomach down in the seat between the officers and lay half on top of him because he tried to wriggle free".

[17] It is stated in the police report that the complainant "was laid flat on the mattress in the cell and searched before his handcuffs were removed".

[18] The State party refers to excerpts from the complainant's medical report from 2005 and 2006, in which it is stated that he had hallucinations, heard voices, and had post-traumatic stress disorder and dissociative disorder.

The State party submits that the complainant's allegations cannot be properly assessed without having due regard to his psychiatric history.

6.4 With regard to the question of medical care, the State party rejects the complainant's allegation that the police officers perceived the complainant to be mentally ill because the police activity log for his incident stated "Illness: psychiatric". The State party submits that this line was inserted by the telephone operator who initially received the telephone call reporting the complainant's incident on 8 November 2006. This was done on the basis of the information provided by the caller to the operator, and was not based on an assessment by the police of the complainant. As regards the claim that the complainant requested medical care, the State party notes that there is no documentation in the case to support that claim. On the contrary, during the interview on 9 November 2006, the complainant did not say anything to the police about the need for medical assistance, or about failure to provide it, except that he was "very tired" and "needed a tablet". Moreover, the officers checked on the complainant every 30 minutes in his holding cell, so they would have become aware of a request for medical assistance and would have made a record of such a request in the prison journal. A copy of the prison journal from 9 November 2006 shows that medical care was provided that night to a person in a different cell for a wound on his chin. Yet there is no record of the complainant making any requests for medical care while in the holding cell.

6.5 With regard to the need that the complainant invoked for psychiatric treatment on the night of 8 November 2006, the State party points out that psychiatrists at the accident and emergency units do not accept patients who are under the influence of alcohol or other substances because of the difficulty of assessing their mental health while they are intoxicated. Since the complainant was under the influence of alcohol on the night he was arrested, which is supported by the custody records and the police report from the night of the incident, he would in any case have had to wait until the following day before he could have met with a doctor for his mental illness. As for the physical injuries sustained by the complainant in detention, they were not of such severity that they would justify putting the police officers and medical personnel at risk, considering the complainant's aggressive behaviour when he was brought into the police station.

6.6 The State party notes that the complainant's stay in his cell was limited to 12 hours overnight. The State party refers to the custody record from which it follows that the complainant was brought to the custody unit at 9.58 p.m. on 8 November 2006. The interview with the complainant took place at 10 a.m. on 9 November 2006, after which he was released. During the period of 12 hours, the officers on duty inspected the complainant every 30 minutes, which is a standard procedure for detainees who are intoxicated. On this basis, the State party submits that the complainant's suffering during the stay in his holding cell did not go beyond the inevitable element of suffering connected with detention in a situation such as the matter at hand.

6.7 With regard to the allegations of violation of article 12 of the Convention, the State party rejects the complainant's assertion that the police should have investigated "the incident in 2006, on the basis of the complainant's statement to the police that something happened to him while in custody and of the enquiry by his lawyer shortly afterwards".[19] The State party submits that since the injuries were indeed caused by the police, there was no reason to believe that the injuries were the result of anything but the use of legitimate force. The statement "something happened" does not contain any suggestion or sign that the complainant was sought out at night by police officers who beat him. If anything, the complainant's statement that he would speak to his lawyer gave reason to expect that the complainant would revert to the police with any complaints, if relevant. As to the complainant's lawyer's 15 November 2006 request for "all documents relating to the apprehension, including logs, any interviews, reports etc.", it is standard procedure to

[19] During the interview with the police on 9 November 2006, before being released, to the question "Did anything special happen to you in the police car or in the holding cell?", the complainant answered: "I don't know. I'm not ready to talk about this." When asked what he meant by that, the complainant said: "Something happened, but I now wish to speak to my lawyer. Something happened in the holding cell too."

request a copy of the case file when a lawyer takes on a criminal case, and the lawyer's letter did not give any sign of an alleged violation of article 16 of the Convention. All case documents were forwarded to the complainant's lawyer on 29 November 2006.

6.8 The State party notes that there is no mention of allegations of ill-treatment in the court judgment or court records pertaining to the main hearing on 7 January 2008. This means that it is unlikely that such accusations were made, and as the complainant was represented by a lawyer, it is to be expected that the lawyer would have followed up on the accusations had they been made. Moreover, the State party cannot see that the report by the complainant — five years after the incident — gave reason to conduct a more comprehensive investigation than that carried out by the Norwegian Bureau for the Investigation of Police Affairs. It also submits that it has clear instructions and provisions in place, issued by the Ministry of Justice and Public Security, should any officer come across or suspect degrading treatment of detainees.

6.9 With regard to the alleged violations of articles 10 and 11 of the Convention, the State party reiterates that these are not subject to individual complaints because of their general, extensive scope. Since the complainant's need for protection against ill-treatment is adequately safeguarded under articles 12 and 16, the State party cannot see the need to extend articles 10 and 11 to individual complaints. Such an extension would, in the State party's opinion, represent an extension of the scope of the said articles without a legal basis in the Convention. Nevertheless, the State party provided detailed information with respect to the education and instructions provided to the police officers who potentially could have had access to the complainant the night he was detained, as well as rules and instructions for the treatment of persons in custody.[20] Furthermore, the State party refers to the findings of the inspection in October 2005, by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of the police holding cells, where the complainant was held on 8 to 9 November 2006 — which concluded that that "the guidelines set out in circular G-67/2000 were being correctly applied".[21]

Complainant's comments on the State party's observations on the merits

7.1 In his submission dated 8 February 2016, the complainant submitted his comments on the State party's observations on the merits of the case.

7.2 The complainant notes that it is unlikely that the injuries were caused by reasonable use of force, as explained by the State party, as the nature of the injuries suggests they were caused by the complainant's left temple hitting a hard or sharp object. In any case, those injuries should have been recorded in the police report or the prison journal. The complainant refers to the copy of the prison journal from the night of the incident, where a wound on the chin of another detainee is reported but there is no report of injuries to the complainant. Since there is no plausible explanation as to why the injuries were not reported, the complainant submits that there has been a violation of article 16 of the Convention.

7.3 The complainant refers to the State party's suggestion that the complainant's mental condition is relevant when assessing his credibility, and notes that because of the risk that statements from persons suffering from mental illness will be met with such objections, it is especially important that police reports and journals contain very accurate information about all objective factors related to injuries. The complainant's injuries are not hallucinations and should have been reported along with a precise description of the objects that caused them. The complainant also refers to section 3-2 of the regulations for the police, in which it is stated that if use of force by the police results in injury/damage to a person or property, or the situation suggests that police action may give rise to complaints, the police officer is to make a written report of the incident to his supervisors

[20] Copies of the 2006 education curriculum for custody officers, and extracts from the education curriculum for police officers (with English translations).

[21] Circular G-67/2000 was issued by the Ministry of Justice and the Police and contained guidelines for access to health-care services by persons deprived of liberty. In particular, there was a requirement in the circular that access to health-care staff should be provided as soon as possible, but not later than two hours after the detained person's arrival at the police establishment and/or after requesting care.

immediately.[22] If the superior in the present case had received an accurate police report in accordance with the police regulations, it would have been possible for the police to assess the case and secure evidence. The fact that this was not the case shows a lack of efficient procedures in practice.

7.4 The complainant rejects the State party's suggestion that the complainant's lawyer's request for documents was standard procedure. He notes that the standard procedure is to request documents when a client is still detained or when a decision is being made regarding indictment. In the present case, the lawyer was interested in documents relating to the complainant's apprehension, whereas the complainant had already been released and there was no indictment. As regards the reason why the complainant's lawyer did not follow up on the allegations of ill-treatment, the complainant submits that his lawyer did not want to do so. The complainant asked several lawyers to follow up, but none of them did. The complainant suggests that the reason for that could be an earlier case from May 2006, when the Norwegian Bureau for the Investigation of Police Affairs decided not to indict the police officer in a similar case. He also notes that the conditions for having a police officer indicted and convicted in Norway are very strict. The complainant disagrees with the State party's conclusion that there was no reason for the police to instigate an investigation as no violation had taken place. He submits that the lack of willingness to investigate, combined with complete denial of all possible offences, should not be condoned. He notes that it would have been more convincing if the use of force by the police had been investigated by at least one neutral person. Since this did not happen, there was a violation of article 12, read in conjunction with article 16, of the Convention.

7.5 With regard to the lack of medical care, the complainant submits that whenever an injury leads to visible marks, the police ought to bring in health-care providers. Moreover, the complainant's visible suffering from mental illness and/or intoxication should have emphasized the need for medical attention. The complainant refers to the Regulation on the Use of Police Holding Cells, in which it is stated that "before placing a person in a holding cell, the police shall assess his/her need for medical attention and, if necessary, arrange for him/her to be seen by a doctor ...".[23] The complainant argues that the description of him in the police report should have at least given the police officers reason to doubt whether he was mentally stable or consider whether he was too intoxicated or incoherent to take care of himself. They should therefore have called for health-care personnel, who would have considered the complainant's health situation before the police placed him in a holding cell for many hours. The complainant denies the State party's submission that he was checked on in his cell every 30 minutes, and submits that there is no documentation attesting that this actually happened. The complainant also notes that his allegations are not unique, as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment raised the same issue when it visited Norway in 2011 and witnessed a detainee in need of medical attention who was not considered ill enough by the officer on duty at Bergen Police Headquarters. In its report, the European Committee for the Prevention of Torture recommended that police officers be reminded of their duty to ensure that persons who are incapable of taking care of themselves receive the necessary medical attention.[24]

7.6 The complainant suggests that the police had information about his mental illness because (a) in his pocket he had a doctor's notification of illness, with a psychiatric diagnosis; and (b) one of the arresting police officers, officer B, had also previously arrested the complainant, on 13 May 2005, for an unrelated offence. In the 2005 case, the complainant reported officer B to the Norwegian Bureau for the Investigation of Police Affairs for the violence used when arresting him. The complainant's mental condition was documented in the 2005 complaint, and officer B was heavily involved in both the case against the complainant in 2005 and the Bureau's investigation of officer B for using violence during the arrest. The decision of the Director General of Public Prosecutions not to investigate officer B for the incident in 2005 came just three months before the

[22] See the police instructions of 22 June 1990.

[23] Regulation on the Use of Police Holding Cells, 30 June 2006, sect. 2-3.

[24] Report to the Norwegian Government, 21 December 2011, para. 16.

complainant was arrested again, on 8 November 2006. Thus, the complainant suggests that at least one of the arresting officers knew about his mental condition, and that most likely he was not totally unbiased towards the complainant.

7.7 The complainant argues that there were no legal grounds to place him in solitary confinement. The official reason for placing him in the holding cell, as stated in police documents, was to prevent possible destruction of evidence. However, it is not explained in the police documents how the evidence could have been destroyed or why confinement was necessary and proportionate. It is stated in section 170 (a) of the Criminal Procedure Act that a person can be arrested and detained only when there is sufficient reason to do so, and that the measure must be proportionate. In the complainant's case, it was not taken into consideration whether the confinement was necessary and proportionate, because in Norway confinement is the only alternative to a release, when a person is detained after his or her arrest. Consequently, the police only had a choice between confinement and release of the complainant. The complainant refers to the Committee's concluding observations on the third periodic report of Norway, in which the Committee recommended that: "Except in exceptional circumstances, inter alia, when the safety of persons or property is involved, the Committee recommends that the use of solitary confinement should be abolished, particularly during pretrial detention, or at least that it should be strictly and specifically regulated by law and that judicial supervision should be strengthened."[25] The complainant submits that since the issuance of those concluding observations, in 1998, the State party has not altered its general practice of placing all arrested persons in solitary confinement in police holding cells for the initial period of detention.

7.8 The complainant argues that the decisive question in his detention is not the number of hours he spent in solitary confinement, although that is important too, but whether it was necessary and proportionate to hold a mentally ill person in solitary confinement at all. He refers to several reports, which conclude that the first period of solitary confinement is usually the hardest for detainees.[26] He also refers to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, which concludes that all solitary confinement of persons with mental disabilities, regardless of duration, is in violation of article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.[27] The complainant notes that not only in this case, but in general, the police do not provide reasons for placing detainees in solitary confinement because the law does not explicitly require this. Therefore, the lack of a law requiring that the reasoning be provided for placing detainees in solitary confinement, even after the Committee's concluding observations of 1998, is contrary to article 11 of the Convention. Due to the absence of such a law, law enforcement personnel are not trained on this issue, which amounts to a violation of article 10 of the Convention.

State party's additional observations on the merits

8. In a note verbale dated 3 June 2016, the State party submitted English translations of several documents provided earlier by the complainant, and emphasized that it maintained its position regarding the admissibility and merits of the complaint.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee notes the State party's objection that the complaint should be declared inadmissible under article 22 (5) (a) of the Convention since the same matter has already been examined by the European Court of Human Rights. The Committee also notes that the European Court of

[25] See A/53/44, para. 156.

[26] Thomas Horn, *Fullstendig Isolasjon ved Risiko for Bevisforpillelse* (2015), p. 18; Norwegian Ombudsman, case No. 2005/1691, p. 29; and European Committee for Prevention of Torture, 21st general report, CPT/Inf (2011) 28, para. 53.

[27] See A/66/268, para. 78.

Human Rights considered the application inadmissible without giving any other reasons beyond referring to articles 34 and 35 of the European Convention on Human Rights.

9.2 The Committee considers that in the present case, the succinct reasoning provided by the European Court of Human Rights in its decision of 29 November 2012 does not allow the Committee to verify the extent to which the Court examined the complainant's application, including whether it conducted a thorough analysis of the elements related to the merits of the case. Consequently, the Committee considers that it is not precluded by article 22 (5) (a) of the Convention from examining the present communication.

9.3 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes the State party's allegation that the complainant failed to exhaust all available domestic remedies, because after the decision by the Director General of Public Prosecutions not to investigate the matter, the complainant could have initiated a private prosecution against any of the suspected officers, or could have filed a complaint directly with the police. Furthermore, instead of taking the prosecution route, the complainant could have sought relief from the Government through an ordinary civil suit, claiming damages and/or a declaratory judgment to establish that the complainant's individual rights under the Convention had been violated. The Committee also notes the complainant's claim that he could not bring a private prosecution because he did not know the identities of the police officers who came into his cell at night, and that he has taken his penal case as far as possible, making it unreasonable to ask him for further steps in addition to those he has already taken. The Committee further notes the complainant's argument that when there are alternative remedies available, a State party cannot demand that all possible legal remedies be exhausted, as it must be sufficient that one claim has been pursued as far as possible.

9.4 In this regard, the Committee recalls its jurisprudence, which indicates that having unsuccessfully exhausted one remedy, one should not be required, for the purposes of article 22 (5) (b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would in any case not have offered better chances of success.[28] Consequently, the Committee concludes that it is not precluded by the requirements of article 22 (5) (b) of the Convention from considering the communication.

9.5 Not having found any other obstacle to admissibility, the Committee declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

10.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

10.2 The complainant has alleged a violation of article 16 (1) of the Convention, on the grounds that he was placed overnight in solitary confinement upon his arrest, without access to psychiatric care, and suffered beatings by the police. In this respect, the Committee notes the State party's argument that the police had no prior knowledge of the complainant having mental illness, that he did not request any medical treatment, and that his suffering during his stay in the holding cell did not go beyond the inevitable element of suffering that is connected with detention in a situation such as the matter in hand. The Committee also notes the medical reports provided by the complainant, describing his physical injuries after his release from police detention, and the State party's explanation that the complainant's injuries were compatible with the lawful use of force that was necessary when he resisted arrest and detention. While the Committee agrees that a certain amount of pain and suffering may arise from the lawful arrest of an uncooperative and/or violent individual, considering that the use of force in such circumstances is limited to what is necessary and proportionate,[29] it regrets that the police failed, at the time of the author's detention, to make a full record and account of the injuries, which were likely to be visible at the time of detention, in order to allow for an objective review of the time and origin of

[28] *Osmani v. Serbia* (CAT/C/42/D/261/2005), para. 7.1.

[29] *Keremedchiev v. Bulgaria* (CAT/C/41/D/257/2004), para. 9.3.

the complainant's injuries. Nevertheless, on the basis of the information before it, the Committee cannot conclude that the complainant suffered inhuman and degrading treatment while in police detention.

10.3 With regard to the complainant's claim of a violation of article 12, the Committee recalls that article 12 requires that the investigation be prompt, impartial and effective.[30] The Committee notes that despite the fact that the complaint against ill-treatment was filed by the complainant five years after the alleged incident, the State party conducted an investigation which resulted in a decision to not prosecute the police officers because "it would be unlikely that an investigation based on the available information would produce evidence that he has been a victim of a criminal offence". The Committee observes that the complainant was aware of the complaint procedure due to his prior incident with the police in 2005 and had retained legal assistance after his release from detention on 9 November 2006. The complainant provided no documentary evidence that he had complained, during the court hearing on 7 January 2008, about the beatings. In the particular circumstances of this case, the Committee finds that the complainant has failed to substantiate that the investigation conducted into his allegations of ill-treatment was not prompt, impartial and effective. Accordingly, on the basis of the material before it, the Committee cannot conclude that the State party has failed to comply with its obligation to carry out a prompt, impartial and effective investigation into the complainant's allegations of ill-treatment.

10.4 As to the claims of violations of articles 10 and 11, the Committee notes that since it could not conclude that that the State party had violated its obligations under article 16 of the Convention, it is not in a position to make any finding with respect to the rights protected therein.

11. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it does not disclose any violation of the Convention by the State party.

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[30] *N.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 13.2.